The Single Member Company in Greek Company Law and in the Proposed EU Corporate Types

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Abstract

This dissertation was written as part of the LLM in Transnational and European Commercial Law, Banking Law, Arbitration/Mediation at the International Hellenic University and deals with the concept of the single-member company.

The existence and maintenance of a single-member company in both Greek legislation and Greek commercial practice has been an issue of major importance, which concerned the academics, the commercial practice and case law. Based on that fact and on the lack of foreign bibliography about this topic, the dissertation thesis is about the single-member company in Greek company types and in the proposed EU company types.

In particular: There is a small introduction about Greek Commercial Law and the different types of commercial companies in Greek legislation. The companies are categorized and their main characteristics are pointed. The analysis of the single member company is made by category of the company and in particular by sub-categories: in Partnerships the sub-categorization is General Partnership [Omorrithmi etairia O.E], Limited Partnership [Eterorrithmi E.E] and Civil Company [Astiki] and in Companies with Shared Capital the same patent follows [Limited Liability Company E.P.E – Company Limited by Shares Anonymous Etairia A.E. – Private Capital Company I.K.E]. In the end there is a similar analysis regarding the proposed EU corporate types and in particular about the Societas Privata Europaea and Societas Unius Personae.

Special thanks for this work must be given to the supervising Prof. Papadopoulos Thomas, who constitutes a great example to all of us through his educational, scientific and professional career and secondly to all the Professors of this LLM who expand our knowledge fields beyond the “home walls”.

Keywords: Greek Law, Single-Member Company, Partnerships, Corporations

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Introduction

Commercial Law in each individual legal system constitutes a basic pillar of the law and is directly linked to the social practice. Company Law, being a main branch of commercial law, is connected with the capital investment in businesses[1], which places it at a very crucial position for the configuration of the national and the global economy[2]. So, what is defined as «company» according to the Greek legislation and therefore is governed by the relevant regimes? The legislator has developed the company definition in the Art. 741 of the Greek Civil Code according to which: «with the company agreement two or more parties share a mutual obligation to pursue common objective, and in particular economic one, through joint contributions»[3]. So, it is shown that the company is about the contractual relationship in which the business is going to be based on and from which its regimes, that should be applied, will be determined.

In Greek legislation, companies are divided into two basic and big categories: in Partnerships (in Greek «Προσωπικές Εταιρίες») and in Companies with Shared Capital (in Greek «Κεφαλαιουχικές Εταιρίες»). Their main difference focuses on the concept upon which each of them is created. In Partnerships the main interest lies with the personal bonds that each partner maintains with the company and with the rest partners, whereas in Companies with Shared Capital the capital and its growth hold the most significant objective. Moreover, the two categories differ in the liability that the partners share. In the first category the partners share the liability together with

[1] Vasilis Antonopoulos and Spiros Psixomanis, Commercial Law General Part Industrial Property Law (Εμπορικό Δίκαιο Γενικό Μέρος Δίκαιο Βιομηχανικής Ιδιοκτησίας), ed. Sakkoulas (2013) p.8

[2] See for instance: Konstantinos Pampoukis and Paraskeui Papadrosou/Arxaniotaki, Commercial Law-Introduction, Fundamental Concepts (Εμπορικό Δίκαιο-Εισαγωγή, Θεμελιώδεις Έννοιες), ed. Sakkoulas (2001) p.34 and next

[3] In Greek: «Με τη σύμβαση της εταιρίας δύο ή περισσότεροι έχουν αμοιβαίως υποχρέωση να επιδιώκουν με κοινές εισφορές κοινό σκοπό και ιδίως οικονομικό».

the company, whereas in the second category the liability maintains in the company and the partners share no responsibility with their personal property[4].

Based on the fact that the company is about the contractual relationship that two or more individuals or legal persons share, the existence of a single-member company seems contradictory. So, single-member Company is the company that consists of one single partner or shareholder. That condition is faced differently from the legislator in each company type and is treated as a special circumstance. In some cases the single-member company can be created as such from its incorporation, but in others it is rendered in this form later. Specifically, in Partnerships the legislator forbids the incorporation of a single-member company, and allows its existence only for a specific period of time and for certain reasons; whereas in Companies with Shared Capital its existence is more common and in some company types there are individual provisions for its configuration. What is more, in Greek practice we can distinguish the single-member company from the quasi single-member company[5], in which the biggest amount of shares is concentrated in one shareholder and it is not actually a single-member company, but in that case some of the company's operations can be malfunctioning; there will be a short analysis about that type of company in the next chapters of this paper.

Therefore, with this paper, the "case" of the single-member company is going to be examined and analyzed, both in partnerships and in companies with shared capital, whereas in the end, the single-member company in the proposed EU corporate types is going to be examined and contrasted with the relevant Greek corporate types.

[4] For more details see: Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 8-20

[5] Eliza Alexandridou, Commercial Companies Law, Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών, Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki, 3rd edition (2009) p.18

1. Partnerships

In the first chapter of this paper there will be an analysis about single-member companies in Partnerships. Partnerships in Greek legislation are divided into the following corporate types: the General Partnership (Omorrithmi Etairia), the Limited Partnership (Eterrorithmi Etairia), the Civil Company (Astiki Etairia), the Ship-Co ownership and the Undisclosed Company[6]. This paper will examine the first three corporate types.

1.1 Single Member General Partnership

We will firstly analyze the existence of a single-member General Partnership Company.

1.1.1 Basic features

The General Partnership (from now on G.P.) belongs to the personal commercial companies[7] and is regulated by the provisions No. 249-269 L.4072/2012, where it is defined as: «the company with legal personality which aims at a commercial purpose and its partners are responsible limitlessly and in integrum with the company for the latter's debts[8]». In G.P. the provisions of the Greek Civil Code about the civil company apply equally when more specific regulations are missing. A main feature of the company is that its management and representation are performed by all partners. The most significant feature is the in integrum responsibility of all partners with their personal property together with the company, in which, even if a different agreement exists between the partners about the abovementioned responsibility, that agreement cannot be claimed against third parties[9]. The G.P. in practice is a «family» business

[6] For more details see: Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 3-39

[7] For more information about Greek personal companies see: Panagiotis Kon. Panagiotou, The reform of personal commercial companies in Greek Company Law (Law 4072/2012), Company Lawyer 2014, 35 (12), p 378-386, available at uk.westlaw.com, accessed 30/11/2019

[8] Article 249 par.1 L.4072/2012

[9] For details see: Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.21-39

company, where close bonds are shared by its members[10]. Considering the above, it is concluded that the contractual relationship between the partners has a dominant position in G.P. and the collaboration of at least two persons is demanded for its incorporation.

1.1.2 Establishment

In General Partnership the initial establishment as single-member company is forbidden by the legislator, who requests at least two persons as mentioned above. The single-member G.P. is regulated in Art. 267 L.4072/2012 as follows: «when one or more partners resign from the company for any reason and only one member remains, the company is dissolved, if the entrance of a new partner is not published in the General Commercial Registry within four months[11]». The legislator sets a time limit of four months; within that period of time the G.P. may operate as single-member company[12] and also the entrance of a new member must be published before the expiration of that deadline[13]. Initially, that period was set up to two months, but was amended later by the L.4403/2016. In that point it is legitimate to mention that before the adoption of the L.4072/2012 the G.P. was governed by the relevant provisions of the Greek Civil Code and the Commercial Code[14] , according to which «the concentration of all corporate participations in one partner was a reason for the dissolution of the company[15]». It is clearly shown that the operation of the G.P. as single-member is considered as a swing from the regularity of the company type. The

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[10] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 80

[11] The original text: «Αν αποχωρήσουν για οποιονδήποτε λόγο ένας ή περισσότεροι εταίροι και παραμείνει μόνο ένας εταίρος, η εταιρεία λύνεται, εφόσον μέσα σε τέσσερις μήνες δεν δημοσιευθεί στο Γ.Ε.ΜΗ. η είσοδος νέου εταίρου.[όπως το άρθρο 267 αντικαταστάθηκε από το άρθρο 27 του Ν 4403/2016 (ΦΕΚ Α΄125/7.7.2016)]»

[12] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.37

[13] Georgios Babetas in Mixail-Theodoros Marinos/Georgios Triantafillakis, Personal Companies Law (Δίκαιο Προσωπικών Εταιριών), interpretation by article (art. 249-294 L.4072/2012), ed. Nomiki Bibliothiki (2017), p. 611

[14] Art.741-784 Greek Civil Code, Art.18-28/38-50/64 Greek Commercial Code

[15] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 160

legislator with the abovementioned Article does not provide any possibility for such an establishment, but 'tolerates' the transitory period of four months, within which the company can operate with only the one remaining partner. This regulation of the L.4072/2012 indicates the legislator's will for the conservation of the corporate business and the security of transactions[16].

1.1.3 Partner's withdrawal

The reasons for which the rest general partners are withdrawing from the company differ (as the provision itself does not clarify specific ones) and may be unintentional or voluntary ones.

Article 260 L.4072/2012 defines as unintentional reasons for a partner's exit: a) the partner's death, b) the partner's bankruptcy, c) the submission into custody and any other reason that is foreseen in the statute of the company. Regarding the death of a partner[17], before the entrance of the L.4072/2012 into force, in the case of a two-member G.P. and in the circumstance that there was no provision in the statute of the company about the continuation of the deceased's share by his inheritors, then the G.P. was 'doomed' to its dissolution, since the provision about the short-term single-member performance did not yet exist. However, with the new existing law, in these cases of a partner's death in a two-member G.P., the remaining partner has the opportunity to find a new co-partner and the already existing company "has a chance to survive", even if there is no provision in the statute as the one already mentioned about the deceased's heirs. The same patent also applies in the case of a partner's bankruptcy or a submission into custody. Before the entrance of the L.4072/2012 into force if a partner went bankrupt or was submitted into custody, then the company was dissolved. In order for that not to take place there had to be a special provision in the

[16] See: Georgios Babetas in Mixail-Theodoros Marinos/Georgios Triantafillakis, Personal Companies Law (Δίκαιο Προσωπικών Εταιριών), interpretation by article (art. 249-294 L.4072/2012), ed. Nomiki Bibliothiki (2017), p. 612

[17] For general information see: Panagiotis Kon.Panagiotou, Agreement for the Continuance of the Personal Company Despite the Death of the Partner and the Legal Rights of the Successor in Greek Company Law, European Journal of Law Reform 2012 (14)4, p 494-500, available at www.academia.edu, accessed 30/11/2019

statute of the company, just like in the case of someone's death as mentioned above, allowing the continuance by the remaining members. Due to Art. 260 L.4072/2012 these occasions now constitute reasons for the specific partner's withdrawal, and not for the ipso jure dissolution of the company. It is shown that any of these occasions may lead to the application of the Art. 267 L.4072/2012, which is formulated with the term «withdrawal» and includes all the above mentioned cases.

As mentioned above, in the withdrawal causes, the voluntary departure is also included, which is regulated in Art. 261 L.4072/2012 as follows: «a partner may by his declaration to the company and to the rest partners withdraw from the company, unless otherwise provided in the contractual agreement». In that case, the importance of the provision 267 L.4072/2012 is highly understandable, since without it any voluntary departure in a two-member G.P. would ipso jure lead to the dissolution of the company. Additionally, we have to point out the leaving partner's free will strengthening, which is sought in all commercial transactions, in which the main characteristic is always the freedom of contractual relationships. That strengthening of the partners' volition can also be located in the case of Art.256 L.4072/2012 in combination with Art.267 L4072/2012, according to which the members' partnership may be transferred if this is allowed by the statute or all partners agree. Due to Art. 267 in a two-member G.P. it is now possible for the one partner to transfer its share to the remaining member, an act that could not take place before L.4072/2012 when the leaving partner was divided between the choice of finding someone else to purchase his share or the choice of the ipso jure dissolution of the company by his withdrawal. We should not acknowledge that in all the above cases the remaining partner always carries the burden of finding a new co-partner within four months in order for the company to continue operating!

In order for this chapter to be absolute, we have to mention that, despite all the above unintentional or voluntary reasons, a partner may be forced to leave the company according to Art.263 L.4072/2012; this procedure is performed by the other co-partners and is called «exclusion»; the other member in a two-member company may now perform his legal right of exclusion against his co-partner (for the reasons

described by the law[18]), which, in the past, was possible only for numerous companies; a fact that also implies the liberation of multiple rights for the company members.

1.1.4 Operation

We observe that a main characteristic of the described single-member G.P. is that the "identity" of the legal person is not modified, but remains the same[19]. So, a kind of separation is depicted between the corporate contract and the legal personality of the company, which led many writers to consider the single-member G.P. as a «suffering» of the company contract and not of the legal person.

A main issue for the operation of any company is its brand name. Art. 250 L.4072/2012 regulates that «the company name may consist of a partner's name or more names, or the company activity, or from other relevant words». According to par.2 the name of the leaving partner can remain in the brand «whether there is consent by the partner itself or his inheritors». When a G.P. is transformed into single-member then the brand name can remain the same and the legal person may continue its corporate transactions like before, if the leaving partner gives his consent, which is crucial for the business's stability and the principle of duration.[20]

It is quite obvious that all operations for the management and the representation of the company in that period of four months (or less-until a co-partner is found) will take place from the one remaining member, who will decide about all issues regarding the smooth function within that transitional short-term period.

From the purposive construction of Art.267 L.4072/2012 and the good faith it is inferred that the actio of the leaving or excluded partner for the payment of his share value is suspended during that four month period. The expiration of that deadline bears as consequence the dissolution of the company and its submission into

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[18] Art. 263 L.4072/2012: «The exclusion is allowed for reasons described in Art.259 par. 1d L.4072/2012»

[19] See: Georgios Babetas in Mixail-Theodoros Marinos/Georgios Triantafillakis, Personal Companies Law (Δίκαιο Προσωπικών Εταιριών), interpretation by article (art. 249-294 L.4072/2012), ed. Nomiki Bibliothiki (2017), p. 611

[20] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 90

liquidation; the leaving or excluded partner will be compensated by the liquidation proceeds[21].

In the end, the provision of 267 does not apply in the non registered G.P., as, although it is provided with legal capacity, it does not constitute an autonomous legal person but a contractual union of persons[22].

1.1.5 Liability

The liability of partners in the G.P. is regulated in Art. 249, 258 and 269 L.4072/2012, and is defined as in integrum and parallel together with the legal person[23]. This is translated as an in whole liability that exists alongside with the liability of the company itself. All partners bare the same liability and even if some other agreement has been made between them, it cannot be objected to third parties. As a result, all creditors may claim their demands either from the company or from anyone of its partner or from both[24].

According to Art. 269 L.4072/2012 the personal and limitless liability of the leaving or excluded partner continues to exist for five years for the debts that already existed at the time of his withdrawal/exit. In order for that provision to apply, the modification concerning the withdrawal must have been registered in the General Commercial Registry. For the debts created after the change into single-member type, the company is liable together with the one remaining partner.

The liability of the new partner that enters the single-member company is defined in Art. 258 par.3 L4072/2012 and is in integrum and parallel with the company for all of

[21] See Nikolaos Rokas, Commercial Companies (Εμπορικές Εταιρίες), ed. Sakkoulas, 8th edition (2018), p 156

[22]Nikolaos Rokas, Commercial Companies (Εμπορικές Εταιρίες), ed. Sakkoulas, 8th edition (2018), p 156

[23] For more information see: Lazaros Grigoriadis, Report from Greece: The liability of members for the Debts of Commercial Companies in Greek Law after the entry into force of Law No.4072 of 2012 and Law No. 4321 of 2015, European Company Law, 2015 12(4), 199-203, uk.westlaw.com, accessed 30/11/2019

[24] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 130-140

its debts, meaning the ones existing before his entrance and of course the ones that will arise after[25].

1.2 Single Member Limited Partnership

We will now analyze the existence of a single-member Limited Partnership Company.

1.2.1 Basic features

The Limited Partnership (from now on L.P.) belongs to the personal commercial companies[26] and is regulated by the provisions No. 271-284 L.4072/2012, where is defined as: «the company with legal personality which aims at a commercial purpose and at least one of its partners is responsible limitlessly and in integrum with the company for its debts (general partner) and at least one of them is limited responsible for its debts (limited partner) [27]». When there is no special provision about the L.P the provisions for the General Partnership apply. The main characteristic of this company is the existence of two types of partners, who bare different liability and enjoy unlike extent of powers regarding the management and the representation of the company[28]; its management and representation are performed by the general partner(s), while the limited ones do not generally participate in the business's operations[29]. The most significant feature is the in integrum and personal responsibility of all general partners with their personal property together with the company, while the limited ones bare no liability when they have settled their contribution; and for those of the limited partners who haven't settled their contribution then an in integrum and personal but

[25] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 137

[26] For more information about Greek personal companies see: Panagiotis Kon. Panagiotou, The reform of personal commercial companies in Greek Company Law (Law 4072/2012), Company Lawyer 2014, 35 (12), p 378-386, available at uk.westlaw.com, accessed 30/11/2019

[27] Art. 271 L.4072/2012

[28] For details see: Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.40-47

[29] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 181-186

limited liability exists up to the amount of their contribution[30]. What can be pointed is that we observe a little differentiation from the absolute family and with strict partners' bonds form of the general partnership, since the limited partners seem to have some elements regarding the participation in the company that resemble the companies with shared capital.

1.2.2 Establishment

In Limited Partnership the initial establishment as single-member company is forbidden by the legislator, who requests at least two persons as in General Partnership. This can be easily understood in that circumstance, since this company requires by the law at least one general and one limited partner. The single-member L.P. is tolerated by the legislator for a period of time as it can be observed in Art. 281 par.1 L.4072/2012[31]: «in the case of exit, exclusion or death of the only general partner, the limited partnership is dissolved, unless by an amendment of the corporate contract, which must be registered within four months in the General Commercial Registry, one of the limited partners becomes general partner or if a new general partner enters the company». As it can be well understood, the single-member company in this case may occur when the initial company consisted of two-members (one partner of each category) and one of them for any reason exits the company. The reasons of withdrawal are the same with those analyzed in the General Partnership[32] and may be unintentional or voluntary as described above.

[30] For more information see: Lazaros Grigoriadis, Report from Greece: The liability of members for the Debts of Commercial Companies in Greek Law after the entry into force of Law No.4072 of 2012 and Law No. 4321 of 2015, European Company Law, 2015 12(4), 199-203, uk.westlaw.com, accessed 30/11/2019

[31] The original text in Greek: «Σε περίπτωση εξόδου, αποκλεισμού ή θανάτου του μοναδικού ομόρρυθμου εταίρου, η ετερόρρυθμη εταιρία λύνεται, εκτός εαν με τροποποίηση της εταιρικής σύμβασης, που πρέπει να καταχωρισθεί μέσα σε τέσσερις (4) μήνες στο Γ.Ε.ΜΗ., ένας από τους ετερόρρυθμους εταίρους καταστεί ομόρρυθμος εταίρος ή αν εισέλθει στην εταιρία νέος εταίρος ως ομόρρυθμος...»

[32] See p. 5-6

1.2.3 Operation –Liability

In the case of the single-member L.P. we have to distinguish whether the leaving partner is the only general partner or the only limited partner.

When the leaving partner is the general partner and the one remaining is the limited one, then, according to Art.281, within four months the latter may find a new co-partner, who will enter the company as a general partner. In that period of time the company can function, during which the management operations will be fulfilled by the remaining member. Moreover, in that case scenario, one more possibility is given to the remaining limited partner according to Art.281: to modify his status from limited partner to general partner and after that to find one more co-partner[33]; that occasion seems to resemble more in cases when there are two or more remaining limited partners after the general partner's exit and one of them turns into general partner, so that the company can continue its function. In the case of an initial two-member company, the first mentioned option seems more obtainable. The limited partner who conducts transactions within that four-month period is liable as general partner, according to Art.278 par.2b L.4072/2012. A dispute has arisen regarding whether that limitless liability depends on the awareness of the third contracting party about the partner's status. One opinion that remains at the letter of the law advocates that, since Art. 278 does not distinguish between a limited partnership with or without at least one general partner, awareness of the third party must exist in order for the provision to take place. The opposite opinion proceeds to a purposive contraction and ends up with the conclusion that the remaining limited partner(s) in the single-member L.P. or the numerous L.P. without a general partner is limitlessly liable regardless of the third party's awareness or ignorance[34]. The leaving general partner bears the same liability

[33] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 192

[34] Georgios Babetas in Mixail-Theodoros Marinos/Georgios Triantafillakis, Personal Companies Law (Δίκαιο Προσωπικών Εταιριών), interpretation by article (art. 249-294 L.4072/2012), ed. Nomiki Bibliothiki (2017), p. 616 no.9

as the one described in the general partnership chapter and the new coming partner will be liable limitlessly for all debts of the company[35].

When the leaving party is the only limited partner then Art.282 L.4072/2012 came into force, according to which «in the case of exit, exclusion or death of the only limited partner, the limited partnership continues as general partnership». The above mentioned article was recently repealed by Art. 147 L.4601/2019. At the moment Art.125 L.4601/2019 will be applied correspondingly in such cases, according to which: «a limited partnership is ipso jure converted into general partnership in the case of exit, exclusion or death of its only limited partner[36]». What can be concluded from that new provision is that the company will function from that point on as a general partnership[37], but since it will be a single-member partnership then all the above mentioned principles about the single-member G.P. will apply[38] and the one remaining general partner will have to find a new co-partner within four months in order for the company to continue its function. The type of the new co-partner will define whether the company will continue as G.P. or L.P. after his entrance. The remaining general partner bares a parallel and limitless liability, while the leaving limited partner bares a parallel, in integrum but limited up to his company's portion liability for five years for the debts that already existed at the time of his withdrawal/exit.

1.3 Civil Company

We will now analyze the existence of a single-member Civil Company.

1.3.1 Basic features

The Civil Company is defined in Art.741 Greek Civil Code[39] and is usually without legal personality. The Civil Company is created by at least two persons who pursue a

[35] See p.8
[36] The original text of the Art.125 par.1 of the new L.4601/2019: «ετερόρρυθμη εταιρία μετατρέπεται αυτοδίκαια σε ομόρρυθμη εταιρία σε περίπτωση εξόδου, αποκλεισμού ή θανάτου του μοναδικού ετερόρρυθμου εταίρου. »
[37] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital, Corporate Transformations (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες, Εταιρικοί Μετασχηματισμοί), ed. Nomiki Bibliothiki (2019) p. 675
[38] See p.3-8
[39] See p.1 for the definition

common goal. Whether there is no special provision in the corporate contract then the management and representation is performed by all partners. In the Civil Company without a legal personality each partner is directly, with all his personal property liable but up to the extent of his corporate share. According to Art 784 Civil Code «this company, if it pursues an economic goal, can obtain legal personality when all terms of publicity, which apply in the general partnership, take place». So, civil company may function with legal personality as well; in that case the company obtains its own property and the partners are liable just like general partners are.

1.3.2 Single member Civil Company

According to all the above mentioned, Art. 267 L.4072/2012 cannot be applied at the civil company, since it does not have legal personality[40]. However Art. 270 L.4072/2012 regulates the proportional application of the provisions about the general partnership into the civil company with legal personality[41]. That proportional application presupposes the compatibility of the applicable provision with the concept and nature of the civil company with legal personality. So, the economical purpose that the latter strives for (Art.784), is compatible with the principle of preservation of the company, which is the ratio behind Art. 267 L.4072/2012. According to that, it is argued that Art.267 L.4072/2012 can be applied in the Civil Company with legal personality[42]. A single-member civil company with legal personality can then exist according to the terms and conditions described in the general partnership[43].

[40] Georgios Babetas in Mixail-Theodoros Marinos/Georgios Triantafillakis, Personal Companies Law (Δίκαιο Προσωπικών Εταιριών), interpretation by article (art. 249-294 L.4072/2012), ed. Nomiki Bibliothiki (2017), p. 612 no.7

[41] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.40

[42] See Marinos Mixail, Χρονικά Ιδιωτικού Δικαίου (History of Private Law), 2016 165

[43] See p.3-8

2. Companies with Shared Capital

In the second chapter of this paper there will be an analysis about single-member companies in Companies with Shared-Capital. In Greek legislation they are divided into the following corporate types: Limited Liability Company E.P.E, Company Limited by Shares Anonymous Etairia A.E. and Private Capital Company I.K.E.

2.1 Single Member Limited Liability Company

We will firstly analyze the existence of a single-member Limited Liability Company in Greek law.

2.1.1 Basic Characteristics

The Limited Liability Company belongs to the commercial companies with shared capital although it seems that many writers[44] tend to resemble many of its features with the ones in partnerships. The company is ex lege commercial and it obtains its legal personality with the registration in the General Company Registry. This type of company requires a company capital that can also be zero (Art.4 L.3190/1955) and is freely defined by the members at the incorporation stage, while it can only be changed by a decision of the assembly of the members with an amendment of the company statute[45]; this company capital is "translated" into «shares» and «company portions» for its members. The company functions with two corporate bodies, the Assembly of Members and the Managers and is not under state supervision. The liability for its debts lies only with the company and its property and the law defines special circumstances in which the members are liable with their personal property[46]. For all these reasons this type of company is recommended for «small or medium size

[44] See Nikolaos Rokas, Commercial Companies (Εμπορικές Εταιρίες), ed. Sakkoulas, 8th edition (2018), p 526-527 and Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.57-59

[45] Art. 40 and 41 L.3190/1955

[46] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.78

companies, in which the members do not wish to bare personal liability like in partnerships[47]».

2.1.2 Generalities

The Single Member Limited Liability Company was adopted by the Greek legislator aiming at the harmonization of the Greek legislation to the twelfth Directive 89/667/EEC, relevant to the harmonization of the member states with the limited liability companies with only one member. So, Art. 43a was added to the L.3190/1955 with the P.D. 279/1993, explicitly regulating the already existing phenomenon of the single-member Limited Liability Company[48]. According to Art.43a par.1: «single member limited liability company is the one consisted by one physical or legal person or turns into one-member during its operation[49]». We observe that in that company type the legislator "allows" the initial incorporation of the company as one-member, and he does not set any time limit for its function, in contradiction to the partnerships as analyzed in the previous chapter.

2.1.3 Establishment

For the establishment of the Single Member Limited Liability Company there are no special provisions. Articles 6 and 8 L.3190/1955, which are applied in all Limited Liability Companies, apply here as well. The founding act, meaning the statute, like in every one-man company, is a single-person statement of will and it must take the predicted legal form, which is a notarial deed; then the publicity formalities of Art. 8

[47] Nikolaos Rokas, Commercial Companies (Εμπορικές Εταιρίες), ed. Sakkoulas, 8th edition (2018), p 528-529

[48] Eliza Alexandridou, Commercial Companies Law -Companies with Shared Capital, (Δίκαιο Εμπορικών Εταιριών, Κεφαλαιουχικές Εταιρίες), 3rd edition, ed. Nomiki Bibliothiki (2009) p. 415

[49] Άρθρο 43α παρ.1 : «Μονοπρόσωπη εταιρία περιορισμένης ευθύνης είναι η εταιρία που συνιστάται από ένα φυσικό ή νομικό πρόσωπο ή καθίσταται μονοπρόσωπη κατά τη λειτουργία της [Όπως η παρ.1 αντικαταστάθηκε από το άρθρο 6 παρ.5 του Ν. 4541/2018].»

must follow. In the company's brand name the words: «Single Member Limited Liability Company» or «Single Member LTD[50]» must exist[51] [52].

Correspondingly, when in an already existing multimember LTD all shares are concentrated in one person and it turns into single-member, then the statute has to be amended and the words «Single Member LTD» have to be added to the brand name. It is possible that the opposite case takes place, meaning that a single-member LTD turns into multimember by transferring the shares into more persons. In that case an amendment of the statute will also take place and the word «single-member» will be erased from the brand name[53].

2.1.4 Operation

Regarding the management and the representation of the company by the sole member, provided that no third person has been appointed[54] (according to Art.17 L.3190/1955 a third person can be confined with the management and the representation for a period of time by the assembly of the members), these will be exercised by that one partner. The two bodies of the LTD, meaning the Assembly and the Managers, will be held by that one member. That partner will perform all the relevant actions, as described in Art.18 L.3190/1955; that means that he will perform in the company's name any action that is covered by the latter's purpose. Even if he acts exceeding that purpose, his actions are binding for the legal person of the single-member LTD, considering that the company will not initiate any charge against him by claiming that the third party knew his excess of powers against the company, since he

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[50] In Greek: «Μονοπρόσωπη Εταιρία Περιορισμένης Ευθύνης» or «Μονοπρόσωπη Ε.Π.Ε».

[51] Art.2 par.3 L.3190/1955

[52] Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.506

[53] Eliza Alexandridou, Commercial Companies Law -Companies with Shared Capital, (Δίκαιο Εμπορικών Εταιριών, Κεφαλαιουχικές Εταιρίες), 3rd edition, ed. Nomiki Bibliothiki (2009) p. 417

[54] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.86

is the only one that can “accuse” himself as the sole member participating in the Assembly.

Art. 43 a par.4 L.3190/1955 applies as far as contracts that are being concluded by the sole member and the company are concerned. These contracts have to be registered in the company records, meaning the company’s management record books that are regulated in Art. 25 par.1c L.3190/1955, or they have to be drawn up in writing. For reasons of expediency and according to the most appropriate interpretation, the opinion that the abovementioned rule must also apply to unilateral transactions of the sole member, as manager, with himself, has been supported. That is because the provision 43a bears a protective “character”, in order for the risk of confusion of the company’s property with the member’s property to be prevented[55].

The above mentioned formalities in the company records or the written conclusion of the agreements held between the sole member and the company are not necessary when they concern «current practices occurring under normal circumstances». The judgment whether these actions are current has to be made ad hoc for every single occasion. Even if the law does not foresee sanctions regarding the infringement of the abovementioned regulation, it should be accepted that the relevant transaction will be void[56].

At this point we should state that, according to Art.28 L.3190/1955, the share portion can be transferred with a notarial document, which will include all the necessary details of the new holder(s) of the share, and is subscribed in the members’ registry of Art.25. Depending on whether the sole-member will transfer all of his share or part of it to one or more new members the company will remain single-member or will be transformed into multimember LTD. If the only member of the LTD passes away, then according to Art.29 a transfer because of death takes place and his inheritors enter into his share portion. This transfer must also be recorded into the member’s registry after the inheritor(s) submit a document for his legalization to the company’s records.

[55] Eliza Alexandridou, Commercial Companies Law -Companies with Shared Capital, (Δίκαιο Εμπορικών Εταιριών, Κεφαλαιουχικές Εταιρίες), 3rd edition, ed. Nomiki Bibliothiki (2009) p. 418

[56] Eliza Alexandridou, Commercial Companies Law -Companies with Shared Capital, (Δίκαιο Εμπορικών Εταιριών, Κεφαλαιουχικές Εταιρίες), 3rd edition, ed. Nomiki Bibliothiki (2009) p. 418

2.1.5 Decisions

According to Art. 43a par.3 L.3190/1955 «the powers of the members' assembly are exercised by the single member of the LTD». So, the taking of decisions of Art.13 L.3190/1955, which requests a majority, will of course be performed by the sole member of the company. He will decide about the issues of the company set in Art.14 L.3190/1955, viz the amendment of the statute, the approval of the balance sheet, the profits' distribution and the extension of the company's duration or its dissolution etc.

However, for the company's protection, the third parties' interests and the avoidance of power abuse[57], the law requires compliance with additional formalities, in order to ensure the transparency of the sole member's actions during the operation of the company[58]. So, it is foreseen in the abovementioned article, that the decisions of the single member, who performs the actions of the member's meeting, should be concluded with the presence of a Notary, after they are recorded and signed by the Notary too[59]. Due to Art. 6 par.6 L.4541/2018 the Notary, who attends the process and signs the record, does not have to be based at the same seat with the company[60].

At this point we have to mention that the provision of Art. 12 par.2[61] and Art. 14 par.2 b, d[62] L.3190/1955 will not apply in the Single Member LTD, since it is not possible for the foreseen decision by the assembly to be made. In that case, Art 26

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[57] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 657

[58] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.86

[59] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.86

[60] Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.506

[61] Art.12 par 2 regulates that «his right to vote cannot be exercised by the relevant member, regarding making decisions about the latter's absolution for his liability or the submission of a lawsuit against him according to the Art.14 par.2»

[62] Art. 14 par.2 b and d L.3190/1955: «the assembly of the members is responsible for deciding about: .....b) the appointment and the revocation of the managers and about the absolution of their liabilities,.....d) the submission of lawsuit against the company bodies or individual members, for company claims against them about compensation, that have emerged by their actions or omission during the incorporation or the function of the company».

L.3190/1955 will apply, according to which third parties can bring a lawsuit against the company with claims for compensation[63].

2.1.6 Liability

We observe that with the addition of Art. 43a the legislator abolished the initial provision of Art. 44 par.2, according to which the sole member had unlimited liability. The new regulation is compatible with the community legislator's thesis, viz the removal from the idea of unlimited liability of the only member in companies with shared capital.

So, in the single-member LTD applies the principle of «autonomy» or differently the «division» of the legal entity from its members[64]. Accordingly the general provisions that apply in corporations will be implemented. The general rule is that only the company is liable against third parties for their claims with its property[65]. The rule is stated in Art.1 L.3190/1955: « in limited liability companies, the legal person of the company is solely liable with its property for the company's obligations[66]». The member's liability can only be grounded on certain circumstances and concerning the abusive use of the autonomy of the legal person, following the assessment of the conditions in every single case separately and always under the principle of good faith. Many writers have recorded such circumstances, in which the members bear personal responsibility for third parties' claims against the company. For instance, the member (in our case the sole-member) will be personally liable when he caused certain damage to the company and that is the reason why the legal person cannot fulfill its obligations against its creditors. Especially, such liability will exist when the sole member caused

[63] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital(Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες, ed. Nomiki Bibliothiki (2012) p. 657

[64] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 658

[65] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.86

[66] In Greek: «επί της εταιρείας περιωρισμένης ευθύνης, διά τας εταιρικάς υποχρεώσεις ευθύνεται μόνον η εταιρεία διά της περιουσίας αυτής. »

by his actions confusion regarding his own property and the company's property[67]. Moreover, the single member will be performing the representation of the company regarding all its commercial affairs as mentioned above. In the context of this activity, he will be held liable together with the company's legal person for any tort that he causes to the latter[68]. This co-responsibility is resulting from the general provisions of the Greek Civil Code about legal persons and specifically from article 71, which states that: «the legal person is liable for the acts or omissions of its representative bodies, since the act or omission was made during the performance of the tasks entrusted to them and creates an obligation for compensation. The responsible person is also liable in integrum».

We have to point out that according to Art.9 L.3190/1955, that concerns the period before the registration of the company in the General Company Registry, members are unlimited and in integrum liable together with the company (in single-member LTD the sole member is liable). This regulation was clearly adopted for the protection of third parties that come into agreements with the company before its registration. However, this unlimited liability is not into force if the company (by its representatives) undertakes the responsibility for these actions within three months from its publication process.

2.1.7 Restrictions

The legislator set two specific restrictions regarding the composition of the single-member LTD and the transformation of an LTD into single-member. These restrictions are imprinted in Art.43a par.2 L.3190/1955, which is as follows: « a physical or legal person cannot be sole member into more than one limited liability companies under a penalty of invalidity. A Limited Liability Company cannot, under a penalty of invalidity,

[67] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 658

[68] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 658

have as a sole member a single-member LTD[69]. ». These restrictions aim at the protection of third contracting parties and the security of transactions. The legislator does not wish for one person to create numerous business risks and distribute them into more single-member companies. If that was the case then the creditors would have been left unprotected, since it would be impossible to supervise all the potential risks created by that one person[70].

Regarding the nullity described in the second case of the abovementioned article, it has been supported that it is more proper to accept that the voidness will be related only to the second single-member company, since that is the one created by infringement of the law[71]. As far as the notion of nullity is concerned, the company still functions until a judicial decision acknowledges that invalidity. Article 7 L.3190/1955 applies in the single-member company as well and sets the conditions for the nullity recognition. The lawsuit can be filled by anyone who bears a legal interest and the decision must be published according to Art.8 L.3190/1955. Under these circumstances the company is dissolved and liquated.

At this point we have to mention that Art.43 a par.5 L.3190/1955 regulates that: «for everything else in the single-member LTD the rest provisions of this law apply as well[72]». So, the researcher that seeks some other details that may not have been covered in the abovementioned chapters of the single-member LTD can apply in a proportional manner the general provisions of the LTD and Law 3190/1955.

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[69] The original text in Greek: «φυσικό ή νομικό πρόσωπο δεν μπορεί, με ποινή ακυρότητας, να είναι μοναδικός εταίρος σε περισσότερες από μία εταιρίες περιορισμένης ευθύνης. Εταιρία Περιορισμένης Ευθύνης δεν μπορεί, με ποινή ακυρότητας, να έχει ως μοναδικό εταίρο μονοπρόσωπη εταιρία περιορισμένης ευθύνης.»

[70] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 659

[71] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 659

[72] In Greek: «κατά τα λοιπά στη μονοπρόσωπη εταιρία περιορισμένης ευθύνης εφαρμόζονται οι λοιπές διατάξεις του παρόντος νόμου»

2.2 Single Member Company Limited by Shares-Anonymous A.E.

We will now analyze the existence of a single-member Company Limited by Shares or as said in Greek «Anonymous Company A.E. » in Greek law.

2.2.1 Basic Characteristics

The Anonymous Company constitutes the most significant commercial corporation, in which shareholders acquire shares relevant to their contributions. It forms the company type that is most commonly chosen for large corporations, handling greater transactions, especially because of the stricter and more frequent publicity and diligence formalities that are required[73]. The Anonymous Company was regulated for almost a hundred years by the L.2190/1920 in the Greek legal system, and for that reason it was held appropriate to create a new legislation, which would regulate the company totally and from scratch. In the explanatory memorandum of the new law, the need for replacement of the anachronistic legislation and the creation of a new one is expressed, by which the fight against bureaucracy, the friendlier and more explicit provisions and also the facilitation of businessmen are attempted[74]. So, the Anonymous company in Greece is regulated by the new L.4548/2018 from 01/01/2019, while the majority of the old provisions of L.2190/1920 are abolished. In any case, the old provisions that remained in force (art. 66-89) were subsequently also abolished by the L.4601/2019 about company transformations, therefore L.2190/1920 has not longer any enforcement.

According to Art.1 par.1 L.4548/2018: «the anonymous company belongs to the companies with shared capital and has legal personality; the company is solely liable for its own debts with its property. Its capital is divided into shares[75]». For the incorporation of the anonymous company a minimum capital of 25.000,00 euros is required, which is in whole deposited during its establishment (Art. 20 L.4548/2018).

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[73] For details: Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.201-207

[74] Explanatory memorandum of the L.4548/2018 part.I 1a and b.

[75] In Greek: «η ανώνυμη εταιρία είναι κεφαλαιουχική εταιρία με νομική προσωπικότητα, για τα χρέη της οποίας ευθύνεται μόνο η ίδια με την περιουσία της. Το κεφάλαιο της διαιρείται σε μετοχές».

2.2.2 Generalities

In the Greek legal order the establishment of a single-member A.E was allowed for the first time with the L.3604/2007, by which Art.1 par.3 L.2190/2012 was amended and it regulated that: «the anonymous company may be established by one or more persons or it can turn into single-member by the concentration of all shares into one person. The establishment by one person or the concentration of all shares into one person, along with the sole shareholder's personal details, are subject to the publicity provisions of Art.7b». So, a single-member A.E is the company in which all shares are concentrated into only one (physical or legal) person. According to the new L.4548/2018 the possibility of incorporation or continuance of the company as sole-member is described in Art.4 par.1, which states: «the anonymous company may be established by one or more persons (the founders) or turn into single-member by the concentration of all shares into one person. The establishment of the A.E. as single-member, the concentration of all shares into one person, and the details of the sole shareholder, are subject to publicity[76]». There is no special chapter in the law or special provisions about the function of the company as sole-member. In fact, there were some provisions that were aiming at the adjustment of the general rules for the multimember companies into the sole-member type in the old legislation. However, in L.4548/2018 we observe that these abovementioned provisions about the single-member A.E do not longer exist; the legislator of course does not prohibit its existence, since he explicitly predicts its establishment.

2.2.3 Establishment

There are not many divergences in the functioning of the single-member A.E. in relation to the multimember ones. This observation is also relevant to the establishment of the company. The founding act of the single-member Societe Anonyme is a unilateral statement of will – and not an agreement like in the

[76] The original text in Greek: «η ανώνυμη εταιρία μπορεί να ιδρυθεί από ένα ή περοσσότερα πρόσωπα (ιδρυτές) ή να καταστεί μονοπρόσωπη με τη συγκέντρωση όλων των μετοχών σε ένα μόνο πρόσωπο. Η ίδρυση ανώνυμης εταιρίας ως μονοπρόσωπης, η συγκέντρωση όλων των μετοχών της σε ένα μόνο πρόσωπο, καθώς και τα στοιχεία του μοναδικού μετόχου της, υποβάλλονται σε δημοσιότητα.»

multimember companies-, which becomes effective provided that the requested type is followed[77]. The type is written, private or notarial[78]. The notarial deed is required only under specific cases and specifically: i) if a special provision of the law requests it ii) if some assets have been contributed to the company, for the transfer of which that type is required by law and iii) if the contracting parties choose the notarial deed[79]. These requirements are regulated in Art.4 par.2 L.4548/2018. In any case the provisions set in Art.12, 13 and 14 L.4548/2018 about publicity must be adhered.

The statute of the single-member company must contain numerous details about the founding stage and the functioning of the company. Art. 5 L.4548/2018 explicitly lists the required details for the statute to be totally legitimate. Some of the most important are the brand name, the company's purpose, the seat, the duration, the capital, the personal details of the person that signed the statute and the ways of convergence and function of the company's bodies[80].

Regarding the brand name of the company, which is regulated in Art.6 L.4548/2018, the words «Single Member Societe Anonyme» or «Single Member SA[81]» must be included[82]. This idiom is added or removed when it is necessary by registration of the relevant Board of Directors' decision in the General Commercial Registry[83]. As far as the share capital is concerned, Art.15 and 16 L.4548/2018 apply, according to which the initial capital can be covered by only one founder during the incorporation stage[84].

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[77] Nikolaos Rokas, Commercial Companies (Εμπορικές Εταιρίες), ed. Sakkoulas, 8th edition (2018), p 607

[78] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.91

[79] Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.218

[80] For details See: Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.91-93

[81] In Greek: «Μονοπρόσωπη Ανώνυμη Εταιρία» or «Μονοπρόσωπη ΑΕ»

[82] See Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.92

[83] Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.222

[84] The capital has to be fully submitted at the incorporation stage except special circumstances set in Art.21 L.4548/2018 about partial coverage.

2.2.4 Operation- Decisions

The SA has two major company bodies: the Board of Directors (Art.77-115 L.4548/2018) and the General Meeting of the Shareholders (Art.116-140 L.4548/2018). The BOD's domain is the management and the representation of the company, is normally consisted of three to fifteen persons, shareholders or not and is elected by the General Meeting[85]. According to the new Art.115 L.4548/2018 there may exist a sole-person management body for small SAs, which is appointed by the General Meeting[86]. That condition must be explicitly allowed by the statute and we may understand the significance of this new development for a single-member SA, where the sole shareholder composes the General Meeting and can be self-appointed as manager of the company. In that case where the only shareholder is also the only manager he can totally control the company and conclude any transaction; his power will not have limitations and he will not be controlled by the minority of shareholders like in multimember SAs or by the rest of directors. In that case Art.94 L.4548/2018 seems appropriate to apply, since it allows the subscription of the records without a meeting of the Board (along with Art.93). It is of course possible that the sole-shareholder chooses the multimember BOD considering the statute's conditions and the most beneficial option for the SA[87]. The BOD always bears an obligation of loyalty and commitment to the company and its goals and faces the prohibition of competitive actions against the SA (Articles 97 and 98 L.4548/2018).

The General Meeting of the Shareholders constitutes the supreme body[88] and gives the direction of the company in all areas by its decisions[89]. Regarding the decision

[85] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.136-143

[86] Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.339-340

[87] For the BOD See: Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.340-372

[88] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.152

making in a sole-shareholder SA it is obvious that the convening formalities do not have to take place and the will of the only member would have to be externalized and take the form provided by law. Art. 135 L.4548/2018 will apply if it is foreseen in the statute, since the sole shareholder will take decisions without a real meeting[90]. The decisions will then be recorded in the minutes book, as if they were taken by the "traditional" General Meeting according to Art.135 par. 5 and Art.134 L.4548/2018. In the previous legislation according to Art.32 par.2 L.2190/1920 the presence of a Notary was mandatory when only one shareholder was present in the Meeting; the Notary co-signed the minute that was drafted by the single shareholder. In the new legislation such a term does not seem to exist and there is no need for a Notary to be present in the General Meeting while the records will be drafted according to the abovementioned Articles (134 and next L.4548/2018).

The third body of the SAs is the Auditors, who are certified auditors-accountants or auditor-companies and are appointed by the General Meeting. We will not elaborate more about that body, since it bears no difference for the single-member company and the general provisions will apply[91].

One major issue that concerns the functioning of the company is the conclusion of transactions between the company and the sole shareholder. The highly significant Art.23a par.7 L.2190/1920 was replaced by Art.101 par.4 L.4548/2018, which regulates that: «transactions concluded between the only shareholder and the SA are recorded in the minutes book of the General Meeting or of the BOD or they are being concluded in writing under penalty of nullity. The provision of the preceding subparagraph does

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[89] For the responsibilities of the General Meeting See: Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.307-309

[90] If the provisions of Art.135 do not comply, then the decision will be "traditionally" taken according to Art.119 and next

[91] See: Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.374-382 and Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.168-170

not concern the current transactions which are described in Art.99 par.3». So, it is obvious that in the single-member SA the sole shareholder does not have to take a special permission from the General Meeting in order to conclude the transactions mentioned above[92]. This "privilege" always is under the general restrictions applied in the multimember SAs and described in Art.99-101 L.4548/2018.

Further provisions that differentiate the function of the single-member SA do not seem to exist in the new L.4548/2018; the general provisions for the multimember SA will apply and they will be adjusted when needed.

2.2.5 Liability

In single-member SAs the principle of separation applies, just like in multimember companies[93]. The legal person, as bearer of rights and obligations, has its own property, which is separate and independent for its shareholders' property, and with which it is liable for the debts that are created[94]. That liability is an outcome of the company's legal capacity; it is translated into the exclusive liability for its debts, which means that only its property will be considered as escrow for its creditors and not its shareholders' personal property. And vice versa the company's property is not an escrow for the shareholders' personal debts[95]. The SAs liability is imprinted in Art.1 par.1 L.4548/2018 according to which the company is liable for its own debts.

Contrary to the above, that principle of separation is often disputed in the single-member company; that is because the company is confused with its only member. The removal of the corporate veil is being supported[96] in the case of abuse of the independent existence of the legal person by the shareholder and under the provisions

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[92] Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.353

[93] May also see: Panagiotis Kon. Panagiotou, Reform proposals for the transfer of a business and the responsibility for its debts in Greek Law, Company Lawyer 2013, 34 (11), p 327-339, available at uk.westlaw.com, accessed 30/11/2019

[94] Nikolaos Rokas, Commercial Companies (Εμπορικές Εταιρίες), ed. Sakkoulas, 8th edition (2018), p 17

[95] See the Decision 2/2013 of the Supreme Court of Cassation (Areios Pagos)

[96] See the Decision 2/2013 of the Supreme Court of Cassation (Areios Pagos)

for good faith (Art. 200, 281 and 288 Greek Civil Code)[97]. The most common case of liability of the only shareholder is the confusion of the company's property with his own. Moreover, «when the shareholder damaged the SA or led it to its bankruptcy, and as a result the creditors cannot be compensated by its property, the personal liability of the sole shareholder seems justified, unlike the abovementioned general rule about the liability in corporations[98]».

We have to point out that according to Art.10 L.4548/2018, that concerns the period before the registration of the company in the General Company Registry, members are unlimited and in integrum liable alongside with the company (in single-member SA the sole member is liable), like in the relevant provisions for the LTD; this unlimited liability is not into force if the company (by its representative) undertakes the responsibility for these actions within three months from its publication process[99]. Furthermore, par.2 of the same article establishes liability for the founder(s) of the company for five years from its incorporation, regarding the damage occurred from his error regarding the statute of the SA, the contributions and the company's invalidity, in the event that he was aware or he ought to be aware of the relevant irregularities.

In the end, it is expedient to mention that Art.102 L.4548/2018 (old Art.22a L.2190/1920) regulates the BOD members' liability; according to it the members have responsibility against the company for every action or omission that they perform when the latter is an infringement of their duties[100]. This liability seems incompatible to the single-member SA, when the sole shareholder constitutes also the sole manager of the company as mentioned in the previous sub-chapter. Of course, the provision

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[97] See also: Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.125-126

[98] Nikolaos Rokas, Commercial Companies (Εμπορικές Εταιρίες), ed. Sakkoulas, 8th edition (2018), p 609

[99] Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.294-296

[100] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.147-148 and Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p.355-360

applies when the BOD is composed by more persons and the company may claim its rights for compensation with a corporate lawsuit by a BOD's or Shareholder's decision.

2.2.6 Quasi Single-Member Company

At this point we can mention that the so called «quasi single-member company» is different from the classic single-member one. The first one is the company in which one shareholder is dominant, and the latter «holds the vast majority of the company's shared capital[101]». At this company problems may occur regarding the power excess of the dominant shareholder and in relation to the shareholders that constitute the company's minority. In practice the dominant shareholder will wield the preponderant views in the General Meeting and that will also reflect at the BOD; that will result in the running of the SA only by that shareholder[102] and issues regarding the abusive exercise of the shareholder's rights will occur (Art.281 GrCivil Code)[103]. In the end, the provisions regulating the multimember SA will apply at this company and extreme caution must be taken so that the minority's rights are protected in the most appropriate way.

[101] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 254

[102] Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p. 399

[103] Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p. 388

2.3 Single Member Private Capital Company

We will now analyze the existence of a single-member Private Capital Company or as said in Greek «Idiotiki Kefalaiouxiki Etairia I.K.E» in Greek law.

2.3.1 Basic Characteristics

A new corporate type was introduced to the Greek legal system by the L.4072/2012, and that was the Private Capital Company[104]. The P.C.C belongs to the corporations, is ex lege commercial company and bears a legal personality (Art.43 par.1). The company is regulated in the Articles 43-120 L.4072/2012. The company's capital is determined by its partners and can be even zero. The P.C.C is of a certain time period and if it is not otherwise specified in the statute it is considered to exist for a period of twelve years with extension possibilities. A main characteristic is that the legal person is solely liable for its debts and not the company's partners. According to some writers the term «private» comes from the Societas Privata Europaea, the European Corporation, and it bears as a meaning the few members by whom it is consisted[105]. Besides, it may belong to the companies with shared capital but resembles to the personal companies in many of its features, especially since the corporate participation is disconnected from the shared capital[106].

2.3.2 Generalities

According to Art. 43 par.4 L.4072/2012: «the private capital company may consist of one person or it can turn into single-member. The name of the sole partner is made public through the General Commercial Registry». So, the P.C. can be founded by only one natural or legal person, and it seems that the only requirement is the person's

[104] See: Lazaros Grigoriadis, Report from Greece: a new business entity in Greek Company Law-the Private Company (P.C.), European Company Law, 2013, 10 (6), p 213-215, available at uk.westlaw.com, accessed 07/01/2020

[105] See for instance: Spyridon Psixomanis, Commercial Companies Law (G.P, L.P, L.P by shares, Silent P, Joint Venture, EEIG, Anonymous C, LTD, P.C) after the L.4541/2018 and L.4548/2018 [Δίκαιο Εμπορικών Εταιριών (ΟΕ, ΕΕ, ΕΕκμ, Αφανούς, Κοινοπραξίας, ΕΟΟΣ, ΑΕ, ΕΠΕ, ΙΚΕ)], ed. Sakkoulas (2018), p. 510

[106] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 662

legal capacity. Moreover, the P.C. may be turned into a single-member company by the concentration of all corporate portions into one partner. Whether the company was established as single-member or turned into one, the sole member by his own diligence must publish his details, for the protection of the transactions' security[107].

2.3.3 Establishment

In accordance to the provisions regulating the other company types, there is the provision of Art.44 par.3 L.4072/2012, which states that: «if the company is single-member, the phrases 'Single Member Private Company' or 'Single Member P.C' must be included in the brand name[108]».

The founding act of the single-member Private Capital Company is a unilateral declaration and is included in the statute (Art 49 L.4072/2012). This document of establishment has to be in a notarial form whether it is defined by the law, such as when immovable property is also included, and when the founders choose it as such. The procedure about the incorporation of the single member P.C is the same to the one for the multi-member companies, except the part concerning the social security[109]. Specifically, the sole partner of the P.C and its manager are covered by social security, in contrast to the multi-member P.C where only the managers and not the partners are being covered[110].

It is legitimate to mention that according to Art.47 L.4072/2012 the single-member P.C. has to establish within a month from its incorporation a website, in which also the details of its partner and manager will be published for reasons of corporate transparency.

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[107] Vasilis Antonopoulos, Private Commercial Company (IKE), interpretation by article of the L.4072/2012 (Ιδιωτική Κεφαλαιουχική Εταιρία ΙΚΕ, κατ' άρθρο ερμηνεία του ν.4072/2012), ed Sakkoulas, 4th ed, 2016, p 10

[108] In Greek: Μονοπρόσωπη Ιδιωτική Κεφαλαιουχική Εταιρία και Μονοπρόσωπη ΙΚΕ

[109] For the incorporation stages see: Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.229

[110] Vasilis Antonopoulos, Private Commercial Company (IKE), interpretation by article of the L.4072/2012 (Ιδιωτική Κεφαλαιουχική Εταιρία ΙΚΕ, κατ' άρθρο ερμηνεία του ν.4072/2012), ed Sakkoulas, 4th ed, 2016, p 38

2.3.4 Operation

In contrast with the multimember P.C, in the single-member one, the legal management and representation are individual and are being exercised by the sole partner[111]. More specifically, Art.55 L.4072/2012 states that «the company is managed and represented by one or more managers». Then Art.56 L.4072/2012 explicitly mentions that the management by law takes place when no special provision is included in the statute. When that circumstance occurs then all partners (and in the single-member P.C. the sole partner) undertake the management[112]. Since the manager(s) can be a physical person, partner or not, then we can assume that the sole partner can appoint another person to undertake the management of the company and process all the relevant procedures about the representation and the administration of the P.C. (Art. 57 and 58 L.4072/2012). The duties of the manager are described in Art.64, while in Art.65 the significance of the manager's loyalty obligation is strongly pointed[113], especially if we consider that the legal person may claim for compensation when some breaches of loyalty occur[114].

Except from the managers the other body of the P.C. is the Partners Assembly, which is regulated in Art.68-74 L.4072/2012. Art. 73 L.4072/2012 seems to be suitable for the case of the single-member P.C., since the provisions about the convocation and the participation in the meetings do not have actual impact when a sole partner decides by himself. Although, the minute that the sole partner drafts has to be signed by him and recorded in the minutes book, that is being kept according to Art.66[115].

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[111] Vasilis Antonopoulos, Private Commercial Company (IKE), interpretation by article of the L.4072/2012 (Ιδιωτική Κεφαλαιουχική Εταιρία ΙΚΕ, κατ' άρθρο ερμηνεία του ν.4072/2012), ed Sakkoulas, 4th ed, 2016, p 53

[112] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.233

[113] Nikolaos Rokas, Commercial Companies (Εμπορικές Εταιρίες), ed. Sakkoulas, 8th edition (2018), p 592

[114] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.236-237

[115] See: Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 679

2.3.5 Liability

According to Art. 43 par. 2 L.4072/2012: « for the company's obligations only the company itself with its property is liable, with caution in Art. 79». So, as also described in the abovementioned corporation types the liability lies with the legal person and not with its partners and their properties[116]. An exemption to that is made in Art.79 and has to do with the type of the partner's contribution[117]. Specifically, when a partner has made a guaranteeing contribution then he is liable together with the company up to the amount that is set to the statute of the company. This partner is liable just like the partners in general partnerships, and the only difference is that he is limited liable[118].

In the end, it is legitimate to mention that according to Art.54 L.4072/2012 if a partner has made transactions at the company's name before its incorporation, then he is liable for those actions limitlessly and severally[119]. This liability no longer exists when the manager undertakes in the company's name these responsibilities within three months from the P.C.'s establishment[120].

2.3.6 Transactions between P.C. and its partners

According to Art. 95 L.4072/2012: «every contract concluded between the company and its partners or managers should be recorded in the minutes record within a month from its conclusion». If the contract is not recorded that does not invalidate the

[116] May also see: Panagiotis Kon. Panagiotou, Reform proposals for the transfer of a business and the responsibility for its debts in Greek Law, Company Lawyer 2013, 34 (11), p 327-339, available at uk.westlaw.com, accessed 30/11/2019

[117] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.243-244

[118] Eliza Alexandridou, Commercial Companies Law Partnerships and Companies with Shared Capital (Δίκαιο Εμπορικών Εταιριών Προσωπικές και Κεφαλαιουχικές Εταιρίες), ed. Nomiki Bibliothiki (2012) p. 684

[119] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.232

[120] Nikolaos Rokas, Commercial Companies (Εμπορικές Εταιρίες), ed. Sakkoulas, 8th edition (2018), p 588

transaction, but it creates liability of the manager or partner against the legal person for the damage occurred from that omission[121].

On the contrary, in the single-member P.C. the abovementioned registration to the minutes book is a prerequisite of validation of the contract between the company and the sole partner or between the company and a third party-manager. Moreover, just like in the single-member L.T.D., the current transactions under normal circumstances are excluded from that norm[122]. That exemption is related to those transactions that concern for instance common clients or suppliers of the P.C. In every case that judgment should be made ad hoc[123].

In other respects, the general provisions for the multimember Private Capital Companies apply, since they are in proportion to the provisions for the Limited Liability Companies.

3. Proposed EU Corporate Types

There has been a major effort in the area of company law among EU States to consolidate the commercial practices between them and in the end to unify the corporate types that exist. The ultimate goal behind these efforts is the facilitation of the transnational exercise of business among the Member States, especially with regard to the free movement of goods, capital, services and people. That effort is certainly depicted in the supranational legal persons that have already been adopted by the EU Committee, such as the European Economic Interest Grouping (Reg. 2137/1985), the Societas Cooperativa Europaea (Reg. 1435/2003) and of course the Societas Europaea (Reg. 2157/2001), which is considered the leading company type in the area of European Company Law.

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[121] Vasilis Antonopoulos, Private Commercial Company (IKE), interpretation by article of the L.4072/2012 (Ιδιωτική Κεφαλαιουχική Εταιρία ΙΚΕ, κατ' άρθρο ερμηνεία του ν.4072/2012), ed Sakkoulas, 4th ed, 2016, p 232

[122] Lampros Kotsiris/Evangeline Kotsiri, Greek Law on Partnerships and Corporations, Sakkoulas Publications (2019) 5th edition p.252

[123] Vasilis Antonopoulos, Private Commercial Company (IKE), interpretation by article of the L.4072/2012 (Ιδιωτική Κεφαλαιουχική Εταιρία ΙΚΕ, κατ' άρθρο ερμηνεία του ν.4072/2012), ed Sakkoulas, 4th ed, 2016, p 233

3.1 Single Member Societas Privata Europaea

Except the above mentioned adopted legal persons, there have been proposals by the Commission for some other legal entities, such as the Societas Privata Europaea (SPE).

3.1.1 Basic features

The need for creation of a legal form which may respond to the economic needs and commercial practices of an enterprise of smaller size held to the proposal of the SPE model[124]. In particular, as pointed in the memorandum of the COM (2008) 396 final, the SPE is a form aiming at facilitating the establishment and operation of small and medium size companies in the single market area. Of course, its remedies may also function and benefit larger companies, and still single-member companies[125]. The enhancement of such enterprises was held imperative in order for them to participate in the transnational transactions, to encourage the transactional confidence and also to strengthen their influence to the people, who trust more difficulty a small foreign enterprise. The main advantage and privilege of this form is the regulatory framework's uniformity[126], which will be undivided regardless of the place of establishment or the place of actual business activity. We have to point out that the Commission's proposal for the SPE was not adopted and the provisions were withdrawn. However, we will analyze some major points of the proposed provisions about that special legal type, the SPE, which was such a progressive and promising project.

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[124] See: Bartosz Makovicz and Faisal Saifee, Societas Privata Europaea: the European Private Company, Company Lawyer 2009, 30(8), p.227-232, available at uk.westlaw.com, accessed 19/01/2020

[125] Dimitrios-Panagiotis Tzakas, The small and medium sized company in European and Greek Company Law, the example of the Societas Privata Europaea-SPE (Η μικρομεσαία επιχείρηση στο Ευρωπαϊκό και Ελληνικό Δίκαιο Εταιριών, Το παράδειγμα της Ευρωπαϊκής Ιδιωτικής Εταιρίας), ed. Nomiki Bibliothiki, 2015 p 25

[126] See: Carl Svernlov and Fanny Petersson, The future of European Company forms, International Company and Commercial Law Review, 2015, 26(5) p 171-173, available at uk.westlaw.com, accessed 19/01/2020

3.1.2 Establishment

Regarding the establishment of the SPE it was regulated in Art.3 par.1 of the COM (2008) 396 final proposal[127], according to which: «a SPE shall comply with the following requirements: ….. c) It shall have legal personality…e) it may be formed by one or more natural persons and/or legal entities, hereinafter "founding shareholders"». Special explanations are given in par.3 about the legal entities that may be shareholders in a SPE and in particular: «legal entities shall mean any company or firm within the meaning of the second paragraph of Article 48 of the Treaty, a European public limited-liability company as provided for in Regulation (EC) No 2001/2157, hereinafter European company, a European Co-operative Society as provided for in Council Regulation (EC) No 1435/2003, a European Economic Interest Grouping as provided for in Council Regulation (EEC) No 2137/85 and an SPE». We may see already from that first articles that a single-member SPE was allowed by the regulators and only one physical or legal person could establish such a company[128]. Restrictions regarding the capability of all persons to be shareholders in a SPE shall be taken into account by the "applicable national law" as presented in Art.4.

At that point we may locate one of the main differences between the SPE and the Societas Europaea regarding the installation of the company: in Art.5 it is regulated that the formation of a SPE could take place either by a transformation of an existing company, by a merger, by division or by creation in accordance with this Regulation. The latter method shows the will of the Council to facilitate the small and medium size enterprises, which would benefit from a much easier and quicker installation process, than the legal persons following the SE type, which cannot be formed from the "scratch", but is addressed only to already existing companies.

Regarding the share capital of the company that was regulated in Art 19; the capital should be at least 1 euro. Moreover, the proposal includes a provision about the

[127] Every Article mentioned hereinafter will correspond to that particular proposal of the Commission: COM (2008) 396 final

[128] Bartosz Makovicz and Faisal Saifee, Societas Privata Europaea: the European Private Company, Company Lawyer 2009, 30(8), p.227-232, available at uk.westlaw.com, accessed 19/01/2020

statute of the SPE in Art 8, according to which the written type is necessary, but not in a notarial deed form , exactly as in the Greek Private Capital Company as described above[129]. On the contrary, in Greek Limited Liability Companies the notarial deed is a prerequisite for their incorporation.

What is also legitimate to mention is the provision of Art.14 par.4, according to which a co-ownership in a share by two or more persons should be considered as an ownership of one person towards the company. The co-owners should appoint a representative and they are jointly liable for the «commitments attached to the share»[130].

3.1.3 Operation

Following the same patent as in the Greek Companies we will mention the basic characteristics of the SPE regarding the operation of the company, meaning its management and representation.

In Art 27 of the proposal we shall locate a major body of the company, the shareholders' meeting. That body is the one resembling to the Shareholders' Assembly that we have already located in Greek companies (LTDs and PCs). More specifically, Art. 27 regulates that specific topics listed in the same article shall be decided by a resolution of the shareholders by a majority. What is interesting in par.3 is that these decisions do not require an actual meeting of the shareholders, but the management body shall provide all shareholders with the relevant proposals[131]. The regulators have made a specific provision for the single-member SPEs in par.5, where they state that: « if the SPE has only one shareholder, he shall exercise the rights and fulfill the obligations of the shareholders of the SPE set out in this Regulation and the articles of association of the SPE». So, all decisions described in Art.27 par. 1, including the

[129] See in p.31 when the notarial deed is necessary for the Private Capital Company
[130] Article 14 par.4 of the proposal
[131] Dimitrios-Panagiotis Tzakas, The small and medium sized company in European and Greek Company Law, the example of the Societas Privata Europaea-SPE (Η μικρομεσαία επιχείρηση στο Ευρωπαϊκό και Ελληνικό Δίκαιο Εταιριών, Το παράδειγμα της Ευρωπαϊκής Ιδιωτικής Εταιρίας), ed. Nomiki Bibliothiki, 2015 p 246-250

appointment and removal of the directors of the SPE would be taken by the sole shareholder.

Except the shareholders' meeting, the SPE should be governed by a management body, which is responsible for the management of the company as set in Art.26 par.1. The proposal creates a general presumption of competence of the management body for all actions regarding the representation and management, except the decisions mentioned above that are the shareholders' responsibility, and except potential other actions explicitly described in the company's statute[132]. At this point it is legitimate to point out that the terms "directors", "management body" or "management board" are all used in this proposal, since there is a categorization regarding whether a SPE is using a dual or unitary system, so accordingly we are talking about a management board or an administrative board. The director(s) shall only be natural persons according to Art.30 par.1, and restrictions about their appointment are given in par.3, according to which the director should be qualified under national law to serve in such a position and he should not have been excluded from such a position by a judicial or administrative decision; the regulators leave in that point a mark leading to the national applicable law.

3.1.4 Liability

Regarding the liability of the shareholders, it is regulated explicitly in Art. 3 par. 1b, according to which: «a shareholder shall not be liable for more that the amount he has subscribed or agreed to subscribe». No more specific guidelines have been given about that responsibility and we may interpret it as the limited liability described in the Limited Liability Companies[133]. The regulators have not predicted provisions regarding

[132] Duties and responsibilities are described in Art.31 of the proposal, See for details: Bartosz Makovicz and Faisal Saifee, Societas Privata Europaea: the European Private Company, Company Lawyer 2009, 30(8), p.227-232, available at uk.westlaw.com, accessed 19/01/2020

[133]See: Mathias M. Siems, Leif Herzog and Erik Rosenhanger, The protection of creditors of a European Private Company, European Business Organization Law Review 2011 12(1), p.163, available at uk.westlaw.com, accessed 24/01/2020

the piercing of the corporate veil[134], so we may assume that they have left that matter unregulated so that the national applicable law can fill the gap[135].

A special reference is made about the liability before the registration of the company in Art.12; the provision is similar to the ones described above about the Greek companies, since it states that the SPE may undertake the responsibility for these actions and acknowledge them as its own. Otherwise, the shareholders who made these actions are liable without any limit. In Greek LTDs and PCs we have seen that a three month time period was set for the company to undertake these actions; in the proposal there is no such time limit, so a connection to the applicable national law may be appropriate to fill that gap according to Art.4[136].

3.2 Societas Unius Personae

Following the proposal for the SPE, that was finally rejected, a new proposal took place for the adoption of a Directive and the establishment of a new legal entity, the Societas Unius Personae, hereinafter SUP.

3.2.1 Basic features

The need for creation of a new legal type that would be pan-European accepted and would benefit the small and medium size companies led the Commission to introduce a new proposal, which would include a corporation not supra-national, but national and of limited liability[137]. This company would bear common characteristics in all EU member States, regulated in the relevant Directive, but the main feature would be that

[134] Dimitrios-Panagiotis Tzakas, The small and medium sized company in European and Greek Company Law, the example of the Societas Privata Europaea-SPE (Η μικρομεσαία επιχείρηση στο Ευρωπαϊκό και Ελληνικό Δίκαιο Εταιριών, Το παράδειγμα της Ευρωπαϊκής Ιδιωτικής Εταιρίας), ed. Nomiki Bibliothiki, 2015 p 305-309

[135] The piercing of the veil has been judged at the Decision 2/2013 of the Supreme Court of Cassation (Areios Pagos) in Greek legislation, see also p.27 for more details

[136] Dimitrios-Panagiotis Tzakas, The small and medium sized company in European and Greek Company Law, the example of the Societas Privata Europaea-SPE (Η μικρομεσαία επιχείρηση στο Ευρωπαϊκό και Ελληνικό Δίκαιο Εταιριών, Το παράδειγμα της Ευρωπαϊκής Ιδιωτικής Εταιρίας), ed. Nomiki Bibliothiki, 2015 p 210-211

[137] Peter Bailey, European Commission moves forward on corporate governance and single-member companies, Company Law Newsletter, 2014, 352, p 1-4

the SUP type would further constitute a national company, included in the rest company types of each domestic legislation[138]. This characteristic, that the SUP proposal harmonizes national laws and does not create uniform law[139], is the first that differentiates it from the SPE type[140]. So, the SUP was the alternative suggestion of the Commission with regard to the SPE model[141]. The Commission based its competence for this proposal in Art. 50 TFEU (and not in Art. 352 TFEU, like in the SPE proposal) based on the latter's provision about the freedom of establishment[142]. At this point we have to mention that on 3rd of July 2018 this proposal was also withdrawn and finally not adopted by the Council. Nevertheless, we will point the most crucial suggestions about the SUP's adoption, since it creates great interest especially regarding our topic in search, the single-member company.

3.2.2 Establishment

The establishment of the SUP was regulated in Art. 6, 7 and 8 of the proposal COM (2014) 212 final[143]; the SUP is granted with legal personality and the "SUP" acronym should be added to the company's brand name. In the abovementioned articles it is stated that: «a SUP may be incorporated by a natural or legal person»; a limitation is observed regarding the founders of the company, and particularly the one founder, especially in comparison to the SPE model; the rationale behind this restriction is not quite clear and its utility regarding the businesses is also questioned[144]. Furthermore, Art. 8 in combination with Art.9 provide the possibility to establish a SUP ex nihilo or

[138] See the explanatory memorandum of COM (2014) 212 final for details about the proposal of the SUP

[139] Christofer Teichmann and Andrea Frohlich, Societas Unius Personae (SUP): facilitating cross-border establishment, Maastricht Journal, 2014, 21(3), p. 538, available at: heinonline.org, accessed 25/01/2020

[140] Carl Svernlov and Fanny Petersson, The future of European Company forms, International Company and Commercial Law Review, 2015, 26(5) p 171-173, available at uk.westlaw.com, accessed 19/01/2020

[141] Antigoni Alexandropoulou, European Company Law (Ευρωπαϊκό Εταιρικό Δίκαιο), ed. Nomiki Bibliothiki, 2015 p.118-119

[142] Explanatory memorandum of COM (2014) 212 final p.5

[143] All articles hereinafter refer to this proposal

[144] Antigoni Alexandropoulou, European Company Law (Ευρωπαϊκό Εταιρικό Δίκαιο), ed. Nomiki Bibliothiki, 2015 p.120

by conversion from another company type accordingly to the rules listed in these articles. The statute of the company would be a private agreement, without an obligation for drafting a notarial deed even if certain objects are contributed to the SUP, for which a notarial type is necessary under the relevant national law[145].

The share capital was set to at least one (1) euro, while the company should issue only a single share that «cannot be split», according to Art. 15 and 16; this provision is contradictory to the ones regulating all the other types described in this paper, in which the company can issue more shares that would be all acquired by one single member[146]. When a co-ownership takes place regarding that one share, then the co-owners would be encountered as one member from the SUP and they should appoint a common representative to execute their rights and responsibilities.

3.2.3 Operation

The organization of the company is ruled in Art.21, 22 and 23 of the proposal. Regarding the decisions made by the single-member they should be recorded in writing, but the presence or their co-signing by a Notary is not foreseen. The single member shall not assemble a general meeting and he exercises all relevant powers by himself. If a decision is not listed in Art.21, then it falls under the competence of the management body, which could be made up by one or more legal or natural persons. Par. 4 of Art.22 regulates explicitly that «the single-member may become a director». It is obvious that, depending on whether the company follows the dual or monistic system of management, the sole member and the sole director could be the same person; all powers then would be gathered in the sole member's judgment[147].

Certain restrictions regarding the capacity of a person to be appointed as director are set in Art. 22 par.6. What is legitimate to mention is the provision of par.7 of the same article, which imposes a type of a de facto administrative body for the company. The

[145] Antigoni Alexandropoulou, European Company Law (Ευρωπαϊκό Εταιρικό Δίκαιο), ed. Nomiki Bibliothiki, 2015 p.123

[146] Antigoni Alexandropoulou, European Company Law (Ευρωπαϊκό Εταιρικό Δίκαιο), ed. Nomiki Bibliothiki, 2015 p.121

[147] See: Mette Neville and Karsten Engsig Sorensen, Promoting entrepreneurship- the new company law agenda, European Business Organization Law Review, 2014, 15(4) p.574-578, available at uk.westlaw.com, accessed 26/01/2020

duties of the SUP's management body are also imprinted in Art.24, where it is stated that their actions are binding for the company even if they excess the initial objective set in the statute.

3.2.4 Liability

The liability is set in Art.7 par.2 of the proposal as follows: «member states shall provide that the single-member shall not be liable for any amount exceeding the subscribed share capital». Under this provision, the limited liability of the member is totally depicted, following the patent used in classic corporation types[148]. The legal person is liable totally and in whole for its debts and the single member may be held liable alongside with the company only for the amount of the subscribed share capital. No further instructions were given regarding that limited liability, so we assume that provisions applied to the national Limited Liability companies apply in SUP as well.

Some provisions for the further protection of creditors were also included in the proposal draft. Art.18 par.3 includes a very interesting provision regarding a «solvency statement» drafted by the management body of the company. That statement is necessary in order for any distribution to be made to the sole member, if it is predicted from the balance sheet that the SUP would not be able to meet its requirements against its creditors[149]. The importance of this statement is shown from the publicity formalities that are also predicted and from the director's personal liability about the signing of this solvency declaration.

This proposal was withdrawn in the end as mentioned above, so we could not further examine whether and how it would have been evolved in the commercial practice.

[148] See also: Mette Neville and Karsten Engsig Sorensen, Promoting entrepreneurship-the new company law agenda, European Business Organization Law Review, 2014, 15(4) p.557-559, available at uk.westlaw.com, accessed 26/01/2020

[149]Christofer Teichmann and Andrea Frohlich, Societas Unius Personae (SUP): facilitating cross-border establishment, Maastricht Journal, 2014, 21(3), p. 539, available at: heinonline.org, accessed 25/01/2020

Conclusions

The company concept, as mentioned before, is based on the union of persons sharing a common objective. The basic characteristic is the existence of numerous persons, who through the union (that can be for instance a capital union) aim at a mutual purpose. In the commercial practise, the single-member company phenomenon was initially observed, which eventually and gradually led the legislators to add specific provisions to the company law regarding this type of businesses. The Community legislator also gave attention to this existing practise and created mandatory rules not only for a European level, but also for a national one; the domestic applicable laws had to be amended and to comply with the numerous Directions and Regulations published regarding the harmonization of companies and their operation.

An issue arises when the single-member of the company abusively uses the legal person of the association for his own benefits and his transactions contrary to the social rules and customs. Since the bonos mores, which constitute the pillar of customary commercial practises, are not respected, the sole member should be burdened with personal liability, bypassing the general rule regarding the corporations about the separation of the property and liability of the legal person and its members.

Following numerous amendments and cases, the single member company is nowadays considered as a normal and usual type of company, taking also into account the large percentage of sole member companies in Greek but also in European level. They should not longer be faced with doubt, since the protection of their creditors possesses a major role in their settings.

The European Council's proposals have shown signs for further development and harmonization. The Member States proved not to be ready for such implementations or the proposals their selves necessitated further research and suggestions. What is left to see is whether the Commission will make a comeback with a new proposal and how the Member States will react to such a possibility.

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